

Report and Recommendations of the NPFMC CDQ Policy Committee

May 24 - 25, 2001 – Anchorage, Alaska
Hilton Hotel - 8:30 am - 5 pm

Committee: Rick Lauber (Chair), Ragnar Alstrom, Eugene Asicksik, John Bundy, Jeff Bush, Morgen Crow, Phillip Lestenkof, John Moller, Robin Samuelson, Greg Baker (absent)

Staff: NMFS - Sally Bibb
NPFMC - Nicole Kimball
State of Alaska - Bryce Edgmon, Laird Jones, Greg Cashen,

Other: Todd Loomis, Eric Olson, Steve Rieger, Don Mitchell, Roger DuBrock, John Lamont, Norman Cohen

Agenda: Provide the Council with a list of issues and alternatives for analysis as identified at the April committee meeting, and if possible, recommend to the Council the committee's preferred alternative on each issue.

The CDQ Policy Committee was formed to address issues related to Community Development Quota (CDQ) oversight responsibilities of the State and NMFS, as well as provide policy recommendations to the Council on changes that may be needed to regulations governing the role of NMFS and the State, the CDQ allocation process, and the administration of the CDQ Program. The Council requested a report from the committee no later than June 2001. In April, the committee identified nine issues and several alternatives and options under each issue, for further discussion at the next meeting. The committee met again on May 24 - 25, and used this list of issues as a framework document by which to make specific recommendations to the Council, if general consensus could be reached. The list of issues and alternatives that the committee recommends by analyzed is attached to this report. The committee did not reach consensus on several issues, and majority/minority opinions are also noted in the following report. This report encompasses the minutes of the May committee meeting, as well as the final committee recommendations on the scope of analysis to the Council.

This report lists each of the nine issues as identified and addressed by the committee. The committee recommendation is listed first under each issue, and the relevant committee discussion, motion, and final vote follow the recommendation.

ISSUE 1: Periodic or Permanent CDQ Allocations

COMMITTEE RECOMMENDATION

Alternative 2, Option 2: Establish a fixed allocation cycle of 3 years. Develop an escape clause so that in extraordinary circumstances the State could recommend and implement a mid-cycle change to an allocation upon approval of the Council.

Committee Discussion

The Committee discussed all of the alternatives under Issue 1, but focused primarily on Alternative 2, which would establish a fixed allocation cycle. Several of the committee members supported recommending a 3-year allocation cycle. The general consensus is that a change is needed to the current 1 or 2-year cycle, as developing a CDP is relatively expensive and burdensome to the groups. Most of the groups also found that implementing a CDP within

a two-year period is fairly difficult, and a shorter cycle tends to force the group to act too conservatively to provide a good investment for the communities in the region. A three-year cycle would allow the communities relative stability and reasonable expectations for the CDP, without establishing a permanent allocation.

The State recommended establishing a two-year cycle in regulation, consistent with their written comments provided to the committee prior to the meeting. The State is concerned that extending the allocation cycle to three years is too long to wait to make adjustments if unforeseen events change a group's ability to harvest its allocation or if other circumstances external to the program necessitate a change in the allocations. In addition, the State contends that a shorter allocation cycle is appropriate in order to keep the groups accountable to the milestones identified in their CDPs, as well as to provide incentives for improvement.

Two members supported establishing a permanent allocation (Alternative 3), but stated that a three-year cycle would be a preferable second choice.

In order to mitigate the State's concern with unforeseeable circumstances and a longer fixed allocation cycle, the Chairman suggested including an "escape clause", in which the State would retain flexibility to react to statutory changes, external impacts, and environmental concerns. The escape clause would need to be identified in regulation in order for the State to implement changes without necessitating a regulatory or plan amendment to do so. The State suggested incorporating language that would require Council approval to make any mid-cycle changes the State recommends, so that the groups would have the opportunity to provide comments to the Council on any proposed changes. The State anticipates that the clause would only be invoked in the most extraordinary of circumstances, but contends that it is important to have that flexibility available.

The committee discussed the idea of adding an escape clause and generally agreed that should the State or the Council determine a need to revisit the allocations before the end of the three-year cycle, the issue would then be placed on the Council agenda. The State noted that the groups themselves would likely notify the State that a mid-cycle change is necessary. In this event, the first question for the Council would be whether to reconsider the allocations mid-cycle. If the Council agrees to reconsider the allocations, then the entire allocation process would be re-initiated.

Sally Bibb noted that the current CDQ regulations provide for transfers of CDQ allocations within an allocation cycle. Using the transfer provision to change allocations probably would only be used if the CDQ group giving up CDQ was willing to do so. She expressed concern with the process involved in reallocating quota from a CDQ group that was unwilling to have the quota reallocated and whether this process could be carried out before the three-year allocation cycle expired.

Jeff Bush moved that the committee recommend Alternative 2, Option 2: Establish a fixed allocation cycle of three years, with an escape clause to be developed so that in extraordinary circumstances the State could recommend and implement a mid-cycle change to an allocation, upon approval of the Council.

The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC). NSEDC objected with the concern that the groups would not be involved in the decision should a mid-cycle allocation change be determined necessary. APICDA favored a permanent allocation.

ISSUE 2: Define the role of government in oversight of the CDQ Program

COMMITTEE RECOMMENDATION

Alternative 2: Specifically identify elements of the government's responsibility for CDQ program administration and oversight of the economic development elements of the program. Government oversight of the CDQ program and the CDQ groups is limited by the following purposes:

1. Ensure community involvement in decision-making;
2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest by verifying CDP milestone compliance and financial performance;
3. Ensure that internal investment criteria and policies are established and followed;
4. Ensure that significant investments are the result of reasonable business decisions, i.e., made after due diligence and with sufficient information to make an informed investment decision; and
5. Ensure compliance with legal program requirements.

Committee Discussion

John Bundy (Glacier Fish) handed out copies of substitute language for Issue 2, Alternative 2, as a motion for addressing the parameters and limitations to government oversight. It was noted that the intent is to limit government oversight without excluding the business assistance role the State has previously undertaken. That role is viewed as a service provided to the CDQ groups and was agreed should not be eliminated.

While not in the original proposed language, the State suggested adding "ensure compliance with legal program requirements" so that it is explicitly stated that the State has an oversight role in other aspects of the program. The example of predatory practices was used: if a group engages in predatory practices, with the willful intent to put another group out of business, the State would retain the authority to discourage that practice during the allocation process. The suggested language was added as a friendly amendment.

Sally Bibb (NMFS) questioned whether the list of responsibilities applied equally to the State and Federal governments or whether they are intended to be divided among the agencies. It was noted that even if the committee intends this list as primarily functions of the State, if language is added to the FMP or the regulations, it could also become the responsibility of NMFS.

One member noted that government oversight is necessary to protect the intent of the program and the beneficiaries/residents in these communities, and thus should not focus on oversight of CDQ managers. It was suggested that oversight instead be tied more closely to the allocation process. The maker of the motion clarified that his intent with outlining these oversight responsibilities is based on the assumption that the allocation process has already occurred, and that oversight is still necessary to ensure that management is acting effectively. While the true accountability should lie with the residents of the CDQ communities, the assumption is that some level of government oversight is going to be necessary, and that the groups should have input as to the appropriate parameters. The maker of the motion did not intend for the list to address the allocation process.

The committee discussed at length the responsibility of the government to "audit CDP milestones" as originally proposed. The State questioned whether use of the word "audit" implies that the committee would like the State to undertake a more formal audit process, in order to audit all of the CDP milestones and not just the financial statements. It was clarified that the intent of the motion is not to expand government oversight beyond its current bounds, but to continue the audit requirement of the financial statements as well as a review (not formal audit) of the goals and objectives in the CDPs. The language should not imply that the current financial statement audit

requirement be removed or that the current audit process be expanded, but it should convey that the State continue its role in tracking and reviewing the milestone and financial performance of the groups.

The Chair noted that (c) in the draft issues/alternatives list covers the financial audit requirement and thus a separate notation for that responsibility may not be necessary. It was suggested to delete (e): audit CDP milestones, and to add explicit language that CDP milestone compliance and financial performance would continue to be reviewed by the State.

The State also noted that the list does not mention program goals, and questioned whether NMFS would be prohibited from adopting regulations necessary to comply with Federal law (the Magnuson-Stevens Act) and the FMP if limited to this list of government oversight responsibilities. NMFS confirmed that the goals and purpose of the program would still exist in the FMP regardless of any oversight responsibilities identified in regulation, and additional regulations could also be implemented to support those goals.

John Bundy moved the language provided for Alternative 2, to limit and specify government oversight in regulation, with revisions made by the committee as referenced above. The motion passed with one objection (Moller, APICDA). APICDA objected on the basis that the motion effectively reflects the current oversight responsibilities of the State even though they are not currently specified in regulation. APICDA noted support for a very limited government oversight role, applied to the program as whole, and not to each individual group.

ISSUE 3: CDQ Allocation Process - Type of Quotas

COMMITTEE RECOMMENDATION

Alternative 1: Status quo. CDQ and prohibited species quota (PSQ) are specified by species, area, and gear type (sablefish and halibut). Each CDQ group is eligible to receive a percentage allocation of each CDQ or PSQ reserve as recommended by the State. The State decides how to balance demographic or socioeconomic factors with performance criteria.

Committee Discussion

The discussion of this issue revolved around whether to establish a foundation quota versus a performance quota, or some combination of each, as opposed to the current wholly competitive process. While the overall importance of the topic was noted (as identified during the April committee meeting as a priority issue), the committee discussed the feasibility of taking up this issue in the timeframe allotted. The State suggested that this is a far more complicated issue than the committee can deal with in one meeting, and the State does not support establishing a foundation quota.

The foundation versus performance quota concept was suggested by the National Research Council (NRC) in its 1999 report on the CDQ Program. The following is excerpted from page 95 of the NRC report:

“The foundation quota (likely more than half of the allocation) would be allocated on measures of population, income, employment, and proximity to the fishery being allocated. The performance quota (the remainder) would be allocated based on clearly defined performance measures such as accomplishments of the Community Development Plan goals, compliance with fishing regulations, quality of Community Development Plans, and so forth.”

One member noted that the original intent was for the CDQ program to be entirely performance-based, in order to ensure real-time benefits to each CDQ community. Because the concept of a foundation quota is generally discussed in terms of establishing a fixed portion of the quota based on population, the committee primarily discussed the issue in that context. Those not in support of a foundation quota generally agreed that population should be one consideration, but not the only criteria for receiving quota. The hypothetical used was that the largest group (by population) could have the poorest record of supplying benefits to their communities. Some members expressed

concern that a foundation quota would also provide incentive for communities to drop out of their current CDQ groups and apply for their own (guaranteed base) allocations, which could potentially erode the entire program.

CBSFA strongly supports the foundation quota plan, but only for the pollock allocations. Other members, while not supporting a foundation quota, thought that if the Council did establish a foundation quota it should apply to crab, pollock, cod, and halibut.

The committee recognized that its time could be spent more productively on other issues and agreed to move on. **The Chair noted that because there is not significant support for establishing a foundation-based quota, the committee would not be recommending any changes to the current system. In effect, the committee recommends the status quo (Alternative 1).**

ISSUE 4: CDQ Allocation Process - The Evaluation Criteria

COMMITTEE RECOMMENDATION

Alternative 2: The criteria for making CDQ allocations should include but are not limited to the following:

1. Number of participating communities, population, and economic condition.
2. A CDP that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional (or community) economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional (or community) economic development.
4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. The CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 CFR 679.1(e).
7. In areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

The State will develop a scorecard evaluation process for the above criteria, in consultation with the CDQ groups. (The State would provide a rationale for each of the scores on each of the listed criteria. The criteria will not be subject to a numerical weighting scheme and are not necessarily given equal weight by the State.)

The purpose of the CDQ program is to benefit eligible Western Alaska communities. The primary purpose is not to use the CDQ program as a tool to achieve other government policies. If other government policies are involved and relate to allocations, milestones, or performance measurement, they must be explicitly identified, after consultation with the CDQ groups, and agreed to by the Council.

Committee Discussion

The committee generally agreed that the current allocation process is not adequate. The State recognized problems in the past with having the CDQ groups develop and agree on a set of criteria, as each group typically advocates for the criteria in which they are strongest. This is the approach captured in Alternative 3, under the H.R. 553 proposed legislation. The Chair questioned whether development of the criteria could be effectively delegated to

the groups as proposed in H.R. 553, as only one group would need to object in order to prevent consensus. In effect, the responsibility of developing the criteria would then revert back to NMFS and the Council.

NMFS noted that Congress may pass legislation (H.R. 553) allowing the groups to develop their own criteria, which could effectively bypass the Council decision-making process, if the CDQ groups agree on criteria. However, should the Council determine that they want the groups or committee to recommend a set of evaluation criteria, it would still need to go through the public process of the Council and NMFS before it could be ultimately approved.

The State questioned whether the real issue is not the content of the criteria but whether it needs to be a lesser number of criteria combined with a more transparent process. The committee also raised the question of whether it should address this issue at all or whether it should wait for the outcome of the APICDA lawsuit, which is largely based on the evaluation criteria. Doubting that the courts would take on the task of developing the criteria and not wanting the Council process to be dictated by external sources, the committee generally agreed that waiting for a court decision was not an adequate solution. More discussion ensued on allowing the groups to get together outside of the committee to develop and agree upon the appropriate criteria. However, the committee generally agreed that the likelihood of complete consensus is low, which would put the responsibility for developing the criteria back with the Council and NMFS.

One member suggested using the Coastal Villages (CVRF) proposal of four basic criteria as a starting point. The CVRF proposal was provided to the committee previous to the meeting. CVRF stated that their proposed criteria was largely based on the criteria that was generally agreed to by the rest of the groups in previous attempts to gain consensus on the evaluation criteria. After much discussion, the committee largely agreed that delaying the issue was not an adequate solution, and that the CVRF proposal represented a good framework with which to begin the process.

The State suggested adding a “scorecard” to whatever criteria is recommended, so that each group could see exactly which factor lowered or raised their overall score. The State cautioned about numerically weighting the scores, as the weighting becomes increasingly important as you narrow the number of criteria. The State noted that some subjectivity would remain in the process, as each criteria would not be numerically weighted, and the State would have to consider which criteria were more important. However, the State did note that fewer criteria and the scorecard method would improve the transparency of the process.

The committee clarified that this would still allow the State and NMFS to approve different allocations of individual species to different groups. This would continue to place the burden on the groups to explain their harvest strategies in the CDPs, and allow the groups to maximize their abilities and allocations.

Bundy moved the CVRF criteria with the modifications described above. Robin Samuelsen (BBEDC) moved to add three of the existing State criteria to the CVRF list, for a total of seven. He also moved to change the introductory language to: “criteria should include but is not limited to the following”. This motion was accepted as friendly.

The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC). APICDA objected on the basis that the State would still be weighting the criteria subjectively, which doesn’t adequately resolve the issue of transparency. APICDA also did not support narrowing the criteria at this point. Alstrom (Yukon Delta) noted a concern with allocations based on past performance of regional or community economic development, but did not object to the overall motion. Lestenkof (CBSFA) generally objects to using population and number of communities as evaluation criteria, but also did not object to the overall motion.

Friday: Bundy moved additional language clarifying the intent and purpose of the CDQ program and explicitly requiring the State to make the groups aware, and get Council approval, of any government policies that may affect the allocation process. The motion was amended to add this language, with one objection (Samuelson, BBEDC). BBEDC objected because the purpose and intent of the program is already stated in the FMP and NMFS regulations, and it contends that it is not necessary to imply that the program is used to implement other State policies. BBEDC did not object to the overall motion.

ISSUE 5: Public Comment on Allocation Recommendations; Appeals Process

COMMITTEE RECOMMENDATION

Alternative 2: Develop a comment period for the State's allocation recommendations such that the State is required to:

1. Issue initial CDQ allocation recommendations and an explanation of changes from the previous allocations;
2. Accept comments from the public and the CDQ groups;
3. Issue final allocation recommendations and a written response to comments, including the reason for any changes from the State's initial allocation recommendations;
4. Consult with the Council on the final allocation recommendations; and
5. Submit final recommendations to NMFS.

The committee also recommends that the Council consider defining a more active role for NMFS as an appeals forum.

Committee Discussion

The committee discussed the roles of the State versus NMFS, and the Chair noted that the Council typically agrees with the State recommendation, as it has limited information to warrant overturning a State recommendation. The idea that follows is that the Council may not have enough time or information to represent an adequate appeals forum. NMFS explained that while the public and the CDQ groups have the opportunity to comment on the State recommended allocations (at the Council meeting), the current process does not have an administrative appeals process through NMFS. The current process does not require NMFS to provide another public comment period, and NMFS bases the final decision primarily on information submitted by the State and on any comments by the Council. There is a distinct difference between a public comment period and a response to those comments versus a formal appeals process with a group of people that are appointed for that purpose.

NMFS does have the authority to disapprove the State's recommendations, even though the agency has not done so in the past. The State has a lot of the responsibility for the program, and NMFS does not provide detailed instructions to the State (in the form of guidelines) on how to make the allocations.

Sally Bibb stated that Alternative 3, Option 2, to develop an appeals process similar to that established in the crab FMP, may not be appropriate but was included because it is an appeals process for management responsibilities that are deferred by the Council and NMFS to the State of Alaska. The process by which we defer crab management responsibility to the State may have some parallels to CDQ Program. She noted that the lack of an appeals process is addressed in the APICDA lawsuit. The committee also discussed the potential for one group to hold up the rest of the allocations if they are involved in an appeal.

One member recommended establishing an annual meeting between the State and the CDQ groups, sometime between when the State announces the allocation recommendations (September) and when the Council approves the allocations (October). This allow the groups a forum to discuss the rationale behind the initial State recommendations. Another member noted that such a meeting would be an appropriate time to correct any errors in the application. It was suggested that to date, the groups may not have used the Council process to the fullest extent possible to make a pitch to change a State recommended allocation.

The State is concerned with the time necessary to conduct a full administrative appeal, likely much more time than a CDQ group could afford to wait. The State also noted that there is already an opportunity to comment on the recommendations to the Council, and that if there is an egregious mistake, the State could make an adjustment (under current process). If we formalize that process to allow the groups to challenge an allocation, it would be in the groups best interest to challenge every single allocation.

APICDA stated its concern that NMFS should play a larger role in the allocation process, and not just approve the State's recommendations. APICDA also thinks we should address the transparency of the process, so that other State policies do not influence the allocation process. The committee discussed the confidentiality issue and the fine line that exists between transparency in the process and keeping a group's financial information confidential.

Robin Samuelsen moved Alternative 2, to develop a comment period for the State's allocation recommendations, with the modification to allow both the public and the CDQ groups to comment on the initial allocation recommendations. Language was also included to reflect a requirement that the State provide a rationale for any changes from the previous year's allocation. It was clarified that the recommendation is to establish a comment and response period and not a formal appeals process.

The motion passed with two objections (Bush, State of Alaska and Moller, APICDA). The State objected (minimally) on the grounds that the additional step added to the process will have no meaningful effect, due to the low likelihood that a public hearing would be productive and result in a re-allocation of all of the other groups' allocations. APICDA objected on the grounds that the motion doesn't change or strengthen NMFS' role in the allocation process. NMFS noted that this alternative keeps the agency role about the same, primarily process-oriented and limited to ensuring that the State completes the process to make the allocation recommendations but not conducting an independent review of those recommendations.

John Bundy moved that a statement be added to the recommended alternative to reflect that the committee recommends that the Council consider defining a more active role for NMFS as an appeals forum. This language passed with one objection (Samuelsen, BBEDC). BBEDC contends that NMFS' current role is appropriate and does not want NMFS to take on additional duties as it would slow down the entire process.

ISSUE 6: Extent of Government Oversight (Definition of a CDQ Project)

COMMITTEE RECOMMENDATION

Alternative 2: Implement revisions to the CDQ Program administrative regulations based on the State of Alaska's proposal.

These revisions would reduce requirements for expenditures that require review and prior approval by the State of Alaska and NMFS, and would clarify that oversight of the CDQ Program by the State of Alaska and NMFS includes the activities of businesses that the CDQ groups own.

Include a rebuttable presumption regarding State oversight of CDQ businesses, so that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise effective management control over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment (not as a CDQ-owned business) and thus subject to lower oversight and reporting requirements.

Committee Discussion

Asicksik (NSED) moved Alternative 4, which mirrors the Congressional legislation proposed that specifies that oversight extend only to activities of the CDQ group and not to the businesses owned by the CDQ group.

Samuelson (BBED) noted that he cannot support Alternative 4 and offered Alternative 2, which mirrors the Bright New World proposal developed by the State and the CDQ groups, as a substitute. BBED could not support Alternative 4 because of the inherent ability for a group to set up several “shell” corporations as subsidiaries, in order to avoid government oversight. BBED contends that this does not support the intent of the Council. Further, Alternative 2 represents the concept that the groups themselves worked to develop, and it would provide the groups with maximum flexibility while keeping investments made with CDQ money within the purview of government oversight.

The State also voiced support for Alternative 2 and discussed the need for an amendment. Currently, if a group owns 50% or more of a subsidiary company, there is a nonrebuttable presumption that the subsidiary is subject to oversight of the program. The State noted that there has always been a concern with that percentage. The reason for the 50% ownership clause is that greater than 50% ownership technically allows that entity (the CDQ group) to control the corporation, even if the CDQ group is not effectively or practically controlling the corporation.

The State offered an amendment to include a rebuttable presumption, so that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise effective management control over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment and thus subject to lower oversight and reporting requirements. Motion accepted as friendly.

The committee discussed the rationale behind requiring oversight over a subsidiary company that the group does not have effective control over. The State’s position is that the CDQ groups engage in two types of activities for the benefit of their communities. The first is as direct participants of those activities. The second is an investment activity, whereby a group may invest in a fishing operation that they do not effectively control but will receive a return on their investment as a means to raise capital. In the latter case, the State can’t expect a CDQ group to control a company in which they may be a majority owner but do not have effective control over, and the rebuttable presumption clause mitigates that problem. The Bright New World proposal makes a distinction between these two types of activities and cleans up the regulations that define the differences. As part of that proposal the regulations would address the difference between core projects (which require a substantial amendment for a change to a CDP) and non-core projects (which require a technical amendment for a change to a CDP) In the context of this alternative, if a subsidiary is majority-owned and effectively controlled by the CDQ group, then a substantial amendment is needed for a change to the CDP to undertake a new activity or investment that is not covered in the CDP. If not, that level of review and procedure may not be necessary.

Based on some of the discussion regarding effective management control, Bundy offered substitute language for Alternative 2 that would delete reference to 50% ownership of the subsidiary company in the State's proposal and base the extent of government oversight solely on whether the CDQ group asserts effective management control over the company. The effect is that it doesn't matter whether the group is a majority owner, it only depends on whether the group has control over the operations of the subsidiaries. Motion failed for lack of a second.

The motion is to recommend Alternative 2, with the additional language provided by the State regarding the rebuttable presumption. The motion carried 5-4. The objecting votes were from Asicksik (NSED), Bundy (Glacier Fish), Lestenkof (CBSFA), and Moller (APICDA). Baker was absent. NSED strongly supports Alternative 4, with very limited government oversight. APICDA noted that they have lost faith in the allocation process as administered by the State and could not support an alternative which solidified the State's oversight role. CBSFA objected on the grounds that the committee should spend more time developing the criteria to ensure good decision-making.

BBEDC expressed frustration with the direction of the committee with respect to this issue, primarily because part of being responsible to the community residents is encompassed in the need for State oversight. The State also voiced concerns about objections to the regulatory changes included in the Bright New World proposal, as the CDQ groups were primary contributors to that proposal.

ISSUE 7: Allowable Investments by CDQ Groups (Fisheries-Related Projects)

Requirements would apply to the CDQ group itself and its effectively controlled subsidiaries, as recommended in the preferred alternative for Issue 6.

COMMITTEE RECOMMENDATION

Alternative 3: Revise NMFS regulations to allow investments in non-fisheries related projects.

The following represents the maximum amount of investment in non-fisheries related projects on an annual basis. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

Option 2: Allow the CDQ groups to invest up to 20% or a maximum of \$500,000 of their pollock royalties in non-fisheries related projects.

Suboption 1: Require that any non-fisheries related investments be made in economic development projects in the region of Alaska represented by the CDQ group.

Committee Discussion

The committee generally agreed that a firm interpretation of, or modification to, the current regulations is needed.

Yukon Delta is concerned with the potential for not having any fisheries-related projects to invest in during particular years, due to stressed commercial fisheries in its region. The current requirement that all CDQ projects are fisheries-related may inhibit the group from investing in any projects during a given year, and securing any return for their communities. A suggestion was made to add flexibility to the regulations so that groups can take advantage of alternative, better opportunities, especially in the case that there aren't any fisheries-related projects to invest in. Yukon Delta voiced support for Alternative 3, Option 2, which would limit the amount of investments

in non-fisheries related projects to a maximum of 20% of pollock royalties. It was noted to keep in mind the variations in the group's investment abilities—while 20% may represent a lot of money for a larger group, it is a fairly modest amount for a smaller group. Yukon Delta also supports Suboption 1, which would require any non-fisheries related projects to be done in the region represented by the CDQ group.

Another member, while voicing support for Alternative 2, Option 3, expressed concern with a policy that would limit the investment to a specific percentage, as it may influence a group to invest in a project solely for that reason and not because it is a good business decision. It was stated that the groups need flexibility to meet the needs of each group's individual region.

NSEDC supports a less restrictive option (Alternative 4) which would allow the CDQ groups to decide what percentage of their total revenues they wish to invest in non-fisheries related projects, without a limit.

BBEDC noted problems with the fact that some communities represented by the groups are well above the commercial fishing district. In order to make meaningful investments in those communities the program needs additional flexibility regarding this issue. BBEDC also cautioned the committee and suggested imposing a maximum dollar amount to be invested in non-fisheries related projects, so that the CDQ groups do not get taxed with taking over State responsibilities for such projects as fixing roads, hiring teachers, etc.

The Chair also cautioned the committee that while one purpose of the CDQ program is to make a profit, that is not the sole purpose. Degrading the public perception of the program may risk eroding support for the entire program.

Sally Bibb noted the need to clarify in regulation the ability of the CDQ groups to spend money on non-fisheries related projects such as scholarships, cultural events, and charitable contributions. The need to clarify our policy on these types of expenditures is particularly important if the Council decides to limit non-fisheries related expenditures to "economic development projects."

CBSFA supported Alternative 2 (prohibiting non-fisheries related projects) and cited the original intent of the program. Concern was voiced that a non-fisheries related project would be weighted the same as a fisheries-related project, and potentially affect a group's allocation that is still trying to meet the "fisheries" intent of the program.

Samuelson moved Alternative 3, Option 2, with additional language to institute a cap of \$500,000 of pollock royalties that can be invested in non-fisheries related projects. Suboption 1 would also apply, to require non-fisheries projects to be done in-region. It was clarified that this limitation would be applied on an annual basis, and that the standard non-fishery projects that are currently allowed (scholarships, etc.) would continue to be allowed and not subject to the cap.

A few members voiced opposition to the \$500,000 cap. A motion was made to delete the cap but failed.

The State voiced concern with not restricting the types of non-fisheries related projects, and made a motion to amend the language so that non-fisheries projects would be limited to *economic development* projects and not encompass community social programs. The amendment was accepted as friendly, with no objections from the committee.

Alternative 3, Option 2, Suboption 1, as amended above by the State, passed 5-3. Lestenkof (CBSFA), Moller (APICDA), and Asicksik (NSEDC) objected based on the concerns expressed above during the discussion.

ISSUE 8: Governance

After some discussion, **the committee voted not to take action on Issue 8**, as no change is determined necessary. It can be removed from the list of issues and alternatives for analysis.

ISSUE 9: Other CDQ Administrative Issues

NMFS noted that most of the administrative changes under this issue would be incorporated, should the Council initiate an analysis, regardless of the committee's recommendations. These are primarily reporting changes based on the State's recommendations to simplify and streamline the regulations regarding the CDP process. In effect, all of these changes would be considered in an analysis for a regulatory package regardless of whether the committee takes action on Issue 9.

Given the above discussion, the committee supports the Council incorporating the options under Issue 9 in an analysis.

OTHER ISSUES

Fishery management issues:

NMFS organized these issues in a separate 3-page paper which was distributed to the committee prior to this meeting (provided as Attachment 2 to this report). Although extremely relevant, these issues are considered separate from the policy issues the committee was tasked to address. These issues will be addressed in an initial analysis for the October 2001 Council meeting. **The committee took no action on these issues.**

Continuation of the committee:

The committee was initially created on the basis that it would address the policy priorities of the committee, provide recommendations to the Council, and subsequently be dis-banded. **The committee recommends the Council keep the committee intact for at least another year, to address on-going and upcoming CDQ issues on an as needed basis.**

CDQ Policy Committee
Recommended Issues and Alternatives for Council Consideration
As revised at May 24-25, 2001, committee meeting

Issue 1: Periodic or Permanent CDQ Allocations

Alternative 1: status quo - continue to make periodic, competitive allocations among CDQ groups (managing organizations that represent eligible communities).

Alternative 2: Establish fixed allocation cycle:

Option 1: establish a 2 year allocation cycle in regulation.

** Option 2: establish a 3 year allocation cycle (H.R. 553 proposes as MSA amendment)

Option 3: establish a 5 year allocation cycle in regulation.

** Sub-option available under Options 1-3

Establish an “escape clause” which would allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. The Council and NMFS would have to approve the State’s recommended reallocation.

Alternative 3: Make permanent allocations to the eligible CDQ communities

The CDQ Policy Committee passed a motion (with two objections) to support Alternative 2, Option 2, a 3-year allocation cycle, with a sub-option to allow the State to recommend mid-cycle reallocation of CDQ among CDQ groups under “extraordinary circumstances.” Council and NMFS approval would be required for a mid-cycle reallocation.

Issue 2: Define the role of government in oversight of the CDQ Program

The appropriate role of government depends on the type of CDQ allocations being made. Following alternatives are appropriate if we continue to make periodic, competitive allocations among CDQ groups.

Alternative 1: Status quo -

- Current FMP language about a joint program of Secretary of Commerce and State of Alaska. Reference to NMFS fisheries management role and the State of Alaska's role in recommending eligible communities and approving Community Development Plans (CDPs) that are the basis for allocations among eligible communities.
- Current NMFS regulations that specify requirements for the State of Alaska in the CDQ allocation process, contents of the CDPs, process for amending the CDPs, and periodic reports.

Alternative 2: Specifically identify elements of the government's responsibility for CDQ program administration and oversight of the economic development elements of the program. Government oversight of the CDQ program and the CDQ groups is limited by the following purposes:

1. Ensure community involvement in decision-making;
2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest by verifying CDP milestone compliance and financial performance;
3. Ensure that internal investment criteria and policies are established and followed;
4. Ensure that significant investments are the result of reasonable business decision, i.e., made after due diligence and with sufficient information to make an informed investment decision; and
5. Ensure compliance with legal program requirements.

The CDQ Policy Committee passed a motion to support Alternative 2 (with one objection).

Issue 3 - CDQ Allocation Process - Type of Quotas

Alternative 1: Status quo - CDQ and prohibited species quota (PSQ) are specified by species, area, and gear type (sablefish and halibut). Each CDQ group is eligible to receive a percentage allocation of each CDQ or PSQ reserve as recommended by the State of Alaska. The State decides how to balance demographic or socioeconomic factors with performance criteria.

Alternative 2: Foundation Quota and Performance Quota

Allocations of CDQ among the CDQ groups are categorized as foundation quota and performance quota.

Foundation quota - some proportion of the CDQ allocations are fixed or based on demographic characteristics, such as population.

Performance quota - some proportion of the CDQ allocations are based on competition among the groups in areas such as financial performance, feasibility of proposed projects, needs of the local fishery, etc. The process used for the competitive allocations will be determined under Issue 4.

Option 1:

Foundation quota - 50% of the CDQ reserve is divided equally among the CDQ groups. Performance quota - 50% is allocated competitively among the CDQ groups.

Option 2:

Foundation quota - 1% for each community in CDQ group.

Performance quota - remaining is allocated competitively among the CDQ groups.

Option 3:

Foundation quota based on population - 1% for every 1,000 people represented by the CDQ group.

Performance quota - remaining is allocated competitively among the CDQ groups.

Option 4:

Foundation quota applied only to a portion of the allocation of pollock as described in Options 1 - 3.

Performance quota - applied to some portion of the pollock allocations and allocation of all other species.

The CDQ Policy Committee recommended status quo - no development of a foundation quota.

Issue 4: CDQ Allocation Process - The Evaluation Criteria

Alternative 1: Status quo

The State publishes evaluation criteria in its regulations and decides how to apply these criteria to make CDQ allocation recommendations. The State explains its application of this criteria in its written recommendations to the Council and NMFS. No specific criteria are published in NMFS regulations.

The criteria currently used by the State (from 6 AAC 93) are attached.

Alternative 2:

The criteria for making CDQ allocations should include but are not limited to the following:

1. Number of participating communities, population, and economic condition.
2. A CDP that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional (or community) economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional (or community) economic development.
4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. The CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 CFR 679.1(e).
7. In areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

Alternative 3: Process described in H.R. 553.

- Evaluation criteria are published in NMFS regulations.
- If all of the CDQ groups agree on the same evaluation criteria, this criteria must be published in NMFS regulations and only this criteria may be used by the State and NMFS to make CDQ allocations.
- If the CDQ groups cannot agree on the evaluation criteria, the Council and NMFS must implement evaluation criteria in NMFS regulations through proposed and final rulemaking.

The CDQ Policy Committee passed a motion to recommend Alternative 2 (with two objections).

ATTACHMENT for ISSUE 4, Alternative 1

Selected State of Alaska CDQ Regulations from 6 AAC 93 related to evaluation criteria for making CDQ allocation recommendations

6 AAC 93.017 CDQ PROGRAM STANDARDS.

To carry out the State's role under 50 C.F.R. 679 and this chapter, the CDQ team shall apply the standards listed in (1) -(9) of this section, as applicable. The CDQ team shall determine whether

- (1) a CDP provides specific and measurable benefits to each community participating in the CDP;
- (2) as part of a CDP, a CDQ project provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities;
- (3) a proposed CDP has the support of all participating communities;
- (4) each CDQ project listed in a CDP has the support of the applicant's or CDQ group's board of directors, reflected by official action of the board;
- (5) before initiating a proposed CDQ project, a CDQ group exercised a level of due diligence that reflects the value of the investment, the risk involved, and the type of project;
- (6) a reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group;
- (7) the CDQ group has minimized legal and financial risk;
- (8) the CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 C.F.R. 679.1(e); and
- (9) in areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

6 AAC 93.040 FINAL EVALUATION OF PROPOSED CDPS [COMPLETE CDP APPLICATIONS]

* * *

(b) The CDQ team shall consider the following factors when reviewing a complete proposed CDP:

- (1) the number of participating eligible communities and (A) the population of each community; and (B) the economic conditions in each community;
- (2) the size of the allocation requested by the applicant and the proper allocation necessary to achieve the milestones and objectives as stated in the proposed CDP;
- (3) the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency;
- (4) the degree, if any, to which each CDQ project is expected to generate (A) capital or equity in the local fisheries economy or infrastructure; or (B) investment in commercial fishing or fish processing operations;
- (5) the applicant's contractual relationship, if any, with joint venture partners and the managing organization;
- (6) the applicant's and the applicant's harvesting and processing partners', if any, involvement and diversity in all facets of harvesting and processing;
- (7) the coordination or cooperation with other applicants or CDQ groups on CDQ projects;
- (8) the experience of the applicant's industry partners, if any;
- (9) the applicant's CDQ projects for employment, education, and training that provide career track opportunities;
- (10) the benefits, if any, to the State's economy or to the economy of communities that are not eligible to participate in the CDQ program that are in addition to the benefits generated by the proposed CDP for participating communities;
- (11) a demonstration, through the information submitted under 6 AAC 93.025(a)(11), that the applicant has a formal, effective administrative process that sets out sound business principles and examples of due diligence that the applicant will exercise;
- (12) the development, if any, of innovative products and processing techniques as well as innovation in harvesting gear for conservation and maximum utilization of the fishery resource;
- (13) the applicant's ability to maintain control over each of its allocations;
- (14) the capital or equity generated by the applicant's CDQ projects for fisheries-related business investment;

Attachment 1

- (15) the past performance of the applicant and the applicant's industry partners, as appropriate;
- (16) the applicant's transition plan, including the objectives set out in the milestone table submitted under 6 AAC 93.025 (a)(13);
- (17) for each CDQ project, the inclusion in the proposed CDP of realistic measurable milestones for determining progress;
- (18) the degree of participating community input in developing the proposed CDP;
- (19) the likely effectiveness of the outreach project described in 6 AAC 93.025(4)(C); and
- (20) comments provided by other agencies, organizations, and the public.

* * *

(g) In apportioning the quota of fishery resource under (e) of this section, the governor will consider the information specified in this chapter and 50 C.F.R. 679 and seek to maximize the benefits of the CDQ program to the greatest number of participating communities.

Issue 5: Public Comment on Allocation Recommendations; Appeals Process

Alternative 1: Status quo

The State issues its CDQ allocation recommendations within a few days before the meeting at which the State will consult with the Council. The CDQ groups may testify to the Council about the State's allocation recommendations. The Council must take any comments into consideration in deciding whether to support the State's recommendations. The State could take these comments into consideration before final recommendations are submitted to NMFS, but if the State's allocation recommendations change as a result of these comments, they must re-consult with the Council. NMFS issues a final agency decision if it approves the State's allocation recommendations. NMFS regulations do not require a public comment period on the State's allocation recommendations after they are submitted to NMFS; also do not require publishing agency decision in the Federal Register.

Alternative 2:

Develop a comment period for the State's allocation recommendations such that the State is required to:

1. Issue initial CDQ allocation recommendations and an explanation of changes from the previous allocations;
2. Accept comments from the public and the CDQ groups;
3. Issue final allocation recommendations and a written response to comments, including the reason for any changes from the State's initial allocation recommendations;
1. Consult with the Council on the final allocation recommendations; and
2. Submit final recommendations to NMFS.

The committee also recommends that the Council consider defining a more active role for NMFS as an appeals forum.

Alternative 3: Develop an appeals process for the State's allocation recommendations.

Option 1: State's initial recommendations are made by division staff with no input from the Commissioner or Deputy Commissioner level. A hearing would be held by the State before a final CDQ allocation recommendation was made by the Commissioner.

Option 2: Develop an appeals process in the FMP similar to the appeals processed established under the crab FMP.

The CDQ Policy Committee recommended Alternative 2, with 2 objections to the motion.

Issue 6: Extent of Government Oversight (Definition of a CDQ Project)

These alternatives are from a initial analysis presented at the October 2000 Council meeting.

Alternative 1: Status quo

NOAA GC opinion that our regulations are unclear on the extent of government oversight authorized by our definition of a CDQ project.

Alternative 2: Implement revisions to the CDQ Program administrative regulations based on the State of Alaska's proposal.

These revisions would reduce requirements for expenditures that require review and prior approval by the State of Alaska and NMFS, and would clarify that oversight of the CDQ Program by the State of Alaska and NMFS *includes* the activities of businesses that the CDQ groups own.

Additional detail in attachment on following page.

Alternative 3: Implement some of the revisions to the CDQ Program administrative regulations proposed by the State of Alaska, but clarify that oversight of the CDQ Program by the State of Alaska and NMFS *does not extend to* the activities of businesses that the CDQ groups own.

Additional detail in attachment on following page.

Alternative 4: (From H.R. 553) Oversight extends only to activities of the CDQ group, not to businesses owned by the CDQ group. Define CDQ project as proposed in H.R. 553.

(i) "CDQ project" means a program or activity that is administered or initiated by a CDQ group and that is funded by revenue the CDQ group derives or accrues during the duration of a community development plan approved by the Secretary from harvesting the fishery covered by the plan.

(ii) such term does not include a program or activity administered or initiated by a subsidiary, joint venture, partnership, or other entity in which a CDQ group owns an equity interest, if the program or activity is funded by the assets of the subsidiary, joint venture, partnership, or other entity, rather than by the assets of the CDQ group.

Need to determine what limitations, if any, would be established by paragraph (i) reference to oversight of "revenue from harvesting the fishery" versus text in paragraph (ii) distinguishing between "assets of the CDQ group" and assets of a subsidiary, etc. Would H.R. 553 limit oversight to the CDQ groups' total revenue or just to the CDQ groups' royalties and other revenues derived from "harvesting the fishery?"

ATTACHMENT FOR ISSUE 6

Additional information from October 2000 analysis related to Alternative 2 and 3

Alternative 2

Following is a summary of the specific revisions to 50 CFR 679.30 that are proposed under Alternative 2. Requirements for information in the CDP and amendments to the CDP would apply to investments and expenditures by the CDQ group and by companies owned by the CDQ group.

- (3) Define three ways to amend or supplement the Community Development Plan. The substantial amendment and technical amendments currently are defined in regulation, but would be amended as described below in (2) through (9). The investment notification would be a new category. The process described below is illustrated in Figure 2.
 - (a) Substantial amendments require review and prior approval by the State and NMFS before the CDQ group can undertake the activity or investment. Substantial amendments generally involve more thorough review by the State and NMFS than do technical amendments.
 - (b) Technical amendment requires review and prior approval by the State and NMFS. NMFS reviews technical amendments for completeness and generally approves them upon receipt with a faxed acknowledgment to the CDQ group and State.
 - (c) Investment notification would not require review and prior approval by the State or NMFS. It would provide notification to the State and NMFS that an investment had occurred and would be required to be submitted within 30 days of the investment.
- (2) Add requirements for a substantial amendment to the CDP for the following expenditures or investments by the CDQ group or by a company in which the CDQ group holds 50% or more ownership interest:
 - (a) expenditures of more than \$1,000,000 on a single CDQ project, or
 - (b) investment in a vessel equal to or greater than 125 feet length overall (LOA), or
 - (c) investment in a vessel of any size that has the capability to process fish or investment in a fish processing plant or facility

[State's proposal reference to "new processing capacity" means investment by a CDQ group or a company owned by the CDQ group in a vessel or plant that has processing capacity.]
- (3) Remove the requirement for a substantial amendment to the CDP for "funding a CDP project in excess of \$100,000."
- (4) Remove the requirement for a substantial amendment to the CDP for "more than a 20-percent increase in the annual budget of an approved CDP project."
- (5) Add requirements for an investment notification for the following expenditures or investments by the CDQ group or by a company in which the CDQ group holds 50% or more ownership interest for the following:

Attachment 1

- (a) expenditure of between \$250,000 and \$1,000,000 for an investment fully described in an approved CDP;
 - (b) expenditure of \$1,000,000 or less for a new investment that is not described in an approved CDP
- (6) Add requirement for an investment notification expenditures or investments of more than \$1,000,000 by a company in which the CDQ group holds less than 50% ownership interest.
- (7) Allow the following expenditures or investment that have been fully described in an approved CDP without any notification to the State or NMFS:
- (a) expenditure of \$250,000 or less for an investment fully described in an approved CDP;
 - (b) expenditure of \$1,000,000 or less by a company in which the CDQ group holds less than 50% ownership interest.
- (8) No notification to the State and NMFS and no amendment to the CDP would be required for the following:
- (a) Expenditures of \$250,000 or less by the CDQ group or by a company in which the CDQ group holds 50% or more ownership interest for projects fully described in an approved CDP.
 - (b) Expenditures of \$1,000,000 or less by a company in which the CDQ group holds less than 50% ownership.
- (9) Reduce the threshold that requires an amendment to the CDP for changes in the administrative budget from 20% of the amount budgeted in the CDP to 10% of the amount budgeted in the CDP.
[Proposed by State after the June Council meeting]

Attachment 1

- (10) Revise text in 50 CFR 679 so that the use of the term CDQ project is consistent with the intent of the CDQ Program regulations.

[Specific recommendations for revising and clarifying regulations will be determined once the preferred alternative is selected]

- (11) Remove the requirement that the CDQ groups submit an annual budget report by December 15 of each year.

The requirement for the annual budget report and the annual budget reconciliation report were added in December 1995 because the State and NMFS believed that the requirement for a general budget in the CDP was not providing enough information to monitor the CDQ groups after the CDP was approved. The annual budget report is a detailed estimate of income and expenditures projected for the coming year that updates information in the CDP's general budget. The annual budget report must be submitted by December 15 of each year and it is approved upon receipt by NMFS unless it is disapproved in writing within 15 days. The provision for approval upon receipt could allow the CDQ groups to make significant changes in their general budget that should have gone through the review and approval process of a CDP amendment. In addition, the timing of this report - December 15 - makes it difficult for the State and NMFS to provide a thorough review within 15 days. NMFS and the State are proposing that the combination of the general budget in the two year CDP, requirements to submit CDP amendments for new investments and changes in administrative expenses, quarterly reports by the CDQ groups, the annual budget reconciliation report required by May 30, and the audited financial statements provide sufficient information to monitor the CDQ groups. Therefore, the requirement for an annual budget report could be removed.

- (12) Simplify the CDQ and PSQ transfer requirements by no longer considering them amendments to the CDP. Transfers of CDQ allocations and annual CDQ amounts would continue to require prior approval by the State and NMFS, but would not require the additional paperwork associated with a CDP amendment.
[Recommended by NMFS to simplify CDP amendment process]

Alternative 3

Alternative 3 would implement most of the revisions to the administrative regulations described under Alternative 2, except that the requirements for information to be supplied in the CDP and activities that trigger an amendment to the CDP would apply only to expenditures or investments made by the CDQ and would not apply to expenditures or investments made by companies owned by the CDQ group.

Issue 7: Allowable Investments by CDQ Groups (Fisheries Related Projects)

Requirements would apply to the CDQ groups itself or the group and its subsidiaries, depending on the preferred alternative for Issue 6.

Alternative 1: Status quo

From NMFS regulations at 50 CFR 679.1(e):

The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.

NMFS regulations implement what we understood as the Council's intent, that the revenue generated by the CDQ allocations is to be spent on "fisheries-related" investments and projects to benefit the communities that are eligible for the CDQ Program.

Current regulations do not include specific investment guidelines or a list of allowable investments.

Some decisions about allowable investments have been made by policy or practicality. For example, CDQ groups provide scholarships for college without restricting the program of study to "fisheries related." Investments in substance abuse programs are not restricted to people working in fisheries related businesses. The CDQ groups' investment accounts include stocks, bonds, (and other financial instruments?) - these investments are not "fisheries related."

Alternative 2: Continue to require that the CDQ groups invest only in "fisheries related" projects, but clarify NMFS regulations as follows:

- Add specific prohibition against CDQ groups investing in non-fisheries related projects;
- Clarify that this prohibition does not apply to certain categories of expenditures or investments, such as investment accounts or scholarships - focus regulations on economic development projects.

Alternative 3: Revise NMFS regulations to allow investments in non-fisheries related projects.

The following options represent the maximum amount of investment in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may chose to invest less than the maximum.

Option 1: Allow the CDQ groups to invest up to 5% of their pollock royalties in non-fisheries related projects.

Option 2: Allow the CDQ groups to invest up to 20% of their pollock royalties or a maximum of \$500,000 in non-fisheries related projects.

Option 3: Allow the CDQ groups to invest up to 50% of total revenues in non-fisheries related projects.

Sub-options could be used in combination with any of Options 1 through 3.

Attachment 1

Sub-option 1: Require that any non-fisheries related investments be made in economic development projects in the region of Alaska represented by the CDQ group.

Alternative 4: Do not place any restrictions on what the CDQ groups may spend money on or what type of projects they may invest in.

The CDQ Policy Committee passed a motion to recommend Alternative 3, Option 2 with suboption 1 (vote 5 - 3).

Issue 8: Governance

This issue was initially raised at the first policy committee meeting. However, the committee decided not to recommend that the Council analyze this issue, as it did not appear to be a problem at this time.

Alternative 1 - Status quo: Make no changes to CDQ Program governance regulations.

[Need to describe status quo for governance regulations; what elements of current regulations address “governance?”]

Alternative 2: Remove the requirement that the CDQ group’s board of directors be composed of at least 75% fishermen from the communities.

Following definition at 50 CFR 679.2 would be revised:

CDQ group means a qualified applicant with an approved CDP.

Qualified applicant means, for the purposes of the CDQ program:

(1) A local fishermen's organization that:

- (i) Represents an eligible community or group of eligible communities;*
- (ii) Is incorporated under the laws of the State of Alaska or under Federal law; and*
- (iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities); or*

(2) A local economic development organization that:

- (i) Represents an eligible community or group of communities;*
- (ii) Is incorporated under the laws of the State of Alaska or under Federal law specifically for the purpose of designing and implementing a CDP; and*
- (iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).*

Comments on governance issues from first committee meeting:

- can all people (communities) participate
- communities need to know how decisions by CDQ group are made
- people need information about CDQ group’s performance

CBSFA and NSEDC send out consolidated financial statements to residents (?) of communities represented by the CDQ group.

Issue 9: Other CDQ Administrative Issues

Develop proposed regulatory amendments to simplify and streamline recordkeeping and reporting requirements, including:

Transfers of CDQ/PSQ allocations (we've never received a request for transfer of % allocation)

- (1) do not allow transfers of %age allocations (can transfer CDQ/PSQ each year)
- (2) require amendment to CDP for transfers of %age allocations

Transfers of CDQ/PSQ would not be amendments to a CDP - just a transfer procedure

- (1) require approval by State of Alaska for transfers
- (2) require notification to State of Alaska at time NMFS approves transfers

PSQ Transfers

- (1) allow at any time during year
- (2) do not require transfer of groundfish CDQ with PSQ
- (3) require prior approval by State or notification to State by NMFS upon approval?

Revisions to the format of the fishing plan

- (1) reduce information requirements
 - (2) do not consider as a technical amendment to a CDP
 - (3) require prior approval by State or notification to State by NMFS upon approval? \
- (depends on whether new vessel or processor is a "partner" with a new contract that State may want to review)

Simplify annual and periodic reports

CDQ Fisheries Management Issues and Alternatives (revised 5/22/01)
Prepared for CDQ Policy Committee, May 24-25, 2001, meeting.

Issue 1: Which species are allocated to the CDQ Program?

Alternative 1: Status quo Species allocated to the CDQ Program are specified in the BSAI FMP and in NMFS regulations.

They currently include halibut, crab, all groundfish species and species groups, except squid, and the prohibited species (halibut, crab, and salmon).

Alternative 2: Remove some groundfish species from CDQ allocations

Specify the list of species or species groups in the BSAI that are allocated to the CDQ Program. The Council would recommend which of the currently allocated species would no longer be allocated to the CDQ Program.

Option 1: List of species or species groups allocated to the CDQ Program are fixed in FMP or regulations.

Option 2: Create a framework for specifying which species or species group are allocated to the CDQ Program through the annual groundfish specifications process.

If a species is not allocated to the CDQ Program, the CDQ group must comply with the same incidental catch (maximum retainable bycatch amounts) and prohibited species status for this species as applies to the non-CDQ fisheries. Catch in the CDQ fisheries would accrue against the TAC for the species along with the catch from the non-CDQ fisheries. Closures of directed fisheries due to overfishing of an incidental catch species will apply to the CDQ and non-CDQ fisheries. The Council could specify whether the CDQ fisheries should be given priority in making overfishing closures.

Analysis would evaluate the impact of removing the following species from the CDQ Program:

Arrowtooth Flounder, all rockfish species, Sablefish (from trawl allocation), Pollock (Bogoslof, Aleutian Islands), "Other species" (skates, sharks, sculpins, octopus).

The Council could specify if additional species should be analyzed for possible removal from CDQ allocations.

Prohibited Species (halibut, crab, salmon) would continue to be allocated to the CDQ Program

Alternative 2 would address the Council's October 1998 request that we analyze removing some species from the CDQ Program as a means of reducing constraints on the ability of the CDQ groups to harvest their target species allocations. In addition, this alternative would address concerns NMFS has about managing very small quotas in the CDQ fisheries when groundfish species groups are subdivided by species (e.g. rockfish, "other species").

Alternative 3: (proposed in H.R. 553) Only species or species groups with a "Bering Sea directed fishery" would be allocated to the CDQ Program. (Assume this refers to directed fisheries in the Bering Sea and Aleutian Islands Area).

Variation of Alternative 2 - but specifically focus only on the species that have directed fisheries. Need to develop a process for identifying the species that have directed fisheries. Also may need to develop process for removing a species from allocation to the CDQ Program if the status of the stock changes enough to cause the TAC to no longer support a directed fishery in the non-CDQ fisheries.

- Option 1: List of species or species groups allocated to the CDQ Program are fixed in regulation.
- Option 2: Create a framework for specifying which species or species group are allocated to the CDQ Program through the annual groundfish specifications process.

Issue 2: What percentage of each species is allocated to the CDQ Program

Alternative 1: Status quo

- 10% of pollock TAC as a directed fishing allowance
- 20% of the sablefish fixed gear allocation
- 7.5% of all other groundfish species or species groups, except squid
- 7.5% of the prohibited species of halibut, crab, and salmon
- range of % of halibut
- 7.5% crab

Alternative 2: Increase the percentage allocation of some prohibited species or groundfish species that are caught incidentally in the CDQ fisheries to increase the possibility that the CDQ groups can fully harvest their target species allocations. This is an alternative to removing species from the CDQ Program that would retain limits for the CDQ fisheries but provide for an increased amount of incidental catch of certain species.

Issue 3: What catch accrues against the CDQ allocation?

Alternative 1: Status quo

All catch in the groundfish and halibut CDQ fisheries accrues against the CDQ groups' CDQ allocations, regardless of whether caught in a directed fishery or as incidental catch.

Current exceptions:

- (1) Pollock CDQ under the AFA is a directed fishing allowance, only catch of pollock in the directed fishery for pollock accrues against the pollock CDQ
- (2) Groundfish bycatch in halibut CDQ fisheries by vessels less than 60' does not accrue against CDQ, accrues against open access quotas if reported.

Alternative 2: Only catch of a species in a directed fishery for that species accrues against CDQ.
(Proposed in H.R. 553)

Species allocated to the CDQ Program are managed as directed fishing allowances - only catch of that species in a directed fishery for that species accrues against the CDQ. Incidental catch in other CDQ fisheries does not accrue against the CDQ.

Additional issues that will be considered in developing alternatives:

1. Should species allocated to the CDQ Program be managed at the CDQ sector level or at the individual CDQ group level? This involves examining the proposal for “pooling” some CDQ species and managing them at the sector level. (Analysis requested by Council October 1998)
2. What would be the consequences of the CDQ Program reaching an allocation of a pooled species?
3. Underage and overage provisions for CDQ/PSQ allocations. (Analysis requested by Council October 1998)
4. How would the alternatives affect catch monitoring, observer coverage, or recordkeeping and reporting requirements?